

PART 50 [RESERVED]

PART 51—INCORPORATION BY REFERENCE

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AUTHORITY: 5 U.S.C. 552(a).

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§ 51.1 Policy.

(a) Section 552(a) of title 5, United States Code, provides, in part, that “matter reasonably available to the class of persons affected thereby is deemed published in the FEDERAL REGISTER when incorporated by reference therein with the approval of the Director of the Federal Register.”

(b) The Director will interpret and apply the language of section 552(a) together with other requirements which govern publication in the FEDERAL REGISTER and the Code of Federal Regulations. Those requirements which govern publication include—

(1) The Federal Register Act (44 U.S.C. 1501 *et seq.*)

(2) The Administrative Procedure Act (5 U.S.C. 551 *et seq.*);

(3) The regulations of the Administrative Committee of the Federal Register under the Federal Register Act (1 CFR Ch. I); and

(4) The acts which require publication in the FEDERAL REGISTER (See CFR volume entitled “CFR Index and Finding Aids.”)

(c) The Director will assume in carrying out the responsibilities for incorporation by reference that incorporation by reference—

(1) Is intended to benefit both the Federal Government and the members of the class affected; and

(2) Is not intended to detract from the legal or practical attributes of the system established by the Federal Register Act, the Administrative Procedure Act, the regulations of the Admin-

istrative Committee of the Federal Register, and the acts which require publication in the FEDERAL REGISTER.

(d) The Director will carry out the responsibilities by applying the standards of part 51 fairly and uniformly.

(e) Publication in the FEDERAL REGISTER of a document containing an incorporation by reference does not of itself constitute an approval of the incorporation by reference by the Director.

(f) Incorporation by reference of a publication is limited to the edition of the publication that is approved. Future amendments or revisions of the publication are not included.

§ 51.3 When will the Director approve a publication?

(a) The Director will approve the incorporation by reference of a publication when the following requirements are met:

(1) The publication is eligible for incorporation by reference (See § 51.7).

(2) The language of incorporation meets the requirements of this part (See § 51.9).

(3) The publication is on file with the Office of the Federal Register.

(4) The Director has received a written request from the agency to approve the incorporation by reference of the publication.

(b) The Director will notify the agency of the approval or disapproval of an incorporation by reference within 20 working days after the agency has met all the requirements for requesting approvals (See § 51.5).

EFFECTIVE DATE NOTE: At 79 FR 66278, Nov. 7, 2014, § 51.3 was revised, effective Jan. 6, 2015. For the convenience of the user, the revised text is set forth as follows:

§ 51.3 When will the Director approve a publication?

(a)(1) The Director will informally approve the proposed incorporation by reference of a publication when the preamble of a proposed rule meets the requirements of this part (See § 51.5(a)).

(2) If the preamble of a proposed rule does not meet the requirements of this part, the Director will return the document to the agency (See 1 CFR 2.4).

(b) The Director will formally approve the incorporation by reference of a publication in a final rule when the following requirements are met:

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(1) The publication is eligible for incorporation by reference (See § 51.7).

(2) The preamble meets the requirements of this part (See § 51.5(b)(2)).

(3) The language of incorporation meets the requirements of this part (See § 51.9).

(4) The publication is on file with the Office of the Federal Register.

(5) The Director has received a written request from the agency to approve the incorporation by reference of the publication.

(c) The Director will notify the agency of the approval or disapproval of an incorporation by reference in a final rule within 20 working days after the agency has met all the requirements for requesting approvals (See § 51.5).

§ 51.5 How does an agency request approval?

(a) Formal approval of a publication for incorporation by reference applies to a final rule document. For timely approval by the Director of the Federal Register, the agency must—

(1) Make a written request for approval at least 20 working days before the agency intends to submit the final rule document for publication;

(2) Send with the written request a copy of the final rule document that uses the proper language of incorporation; and

(3) Ensure that a copy of the publication is on file at the Office of the Federal Register.

(b) Agencies may consult with the Office of the Federal Register at any time with respect to the requirements of this part.

EFFECTIVE DATE NOTE: At 79 FR 66278, Nov. 7, 2014, § 51.5 was revised, effective Jan. 6, 2015. For the convenience of the user, the revised text is set forth as follows:

§ 51.5 How does an agency request approval?

(a) For a proposed rule, the agency does not request formal approval but must:

(1) Discuss, in the preamble of the proposed rule, the ways that the materials it proposes to incorporate by reference are reasonably available to interested parties or how it worked to make those materials reasonably available to interested parties; and

(2) Summarize, in the preamble of the proposed rule, the material it proposes to incorporate by reference.

(b) For a final rule, the agency must request formal approval. The formal request package must:

(1) Send a letter that contains a written request for approval at least 20 working days

before the agency intends to submit the final rule document for publication;

(2) Discuss, in the preamble of the final rule, the ways that the materials it incorporates by reference are reasonably available to interested parties and how interested parties can obtain the materials;

(3) Summarize, in the preamble of the final rule, the material it incorporates by reference;

(4) Send a copy of the final rule document that uses the proper language of incorporation with the written request (See § 51.9); and

(5) Ensure that a copy of the incorporated material is on file at the Office of the Federal Register.

(c) Agencies may consult with the Office of the Federal Register at any time with respect to the requirements of this part.

§ 51.7 What publications are eligible?

(a) A publication is eligible for incorporation by reference under 5 U.S.C. 552(a) if it—

(1) Conforms to the policy stated in § 51.1;

(2) Is published data, criteria, standards, specifications, techniques, illustrations, or similar material;

(3) Substantially reduces the volume of material published in the FEDERAL REGISTER; and

(4) Is reasonably available to and usable by the class of persons affected by the publication. In determining whether a publication is usable, the Director will consider—

(i) The completeness and ease of handling of the publication; and

(ii) Whether it is bound, numbered, and organized.

(b) The Director will assume that a publication produced by the same agency that is seeking its approval is inappropriate for incorporation by reference. A publication produced by the agency may be approved, if, in the judgment of the Director, it meets the requirements of paragraph (a) and possesses other unique or highly unusual qualities. A publication may be approved if it cannot be printed using the FEDERAL REGISTER/Code of Federal Regulations printing system.

(c) The following materials are not appropriate for incorporation by reference:

(1) Material published previously in the FEDERAL REGISTER.

(2) Material published in the *United States Code*.

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EFFECTIVE DATE NOTE: At 79 FR 66278, Nov. 7, 2014, §51.7 was amended by revising paragraph (a), effective Jan. 6, 2015. For the convenience of the user, the revised text is set forth as follows:

§51.7 What publications are eligible?

- (a) A publication is eligible for incorporation by reference under 5 U.S.C. 552(a) if it—
 - (1) Conforms to the policy stated in §51.1;
 - (2)(i) Is published data, criteria, standards, specifications, techniques, illustrations, or similar material; and
 - (ii) Does not detract from the usefulness of the FEDERAL REGISTER publication system; and
 - (3) Is reasonably available to and usable by the class of persons affected. In determining whether a publication is usable, the Director will consider—
 - (i) The completeness and ease of handling of the publication; and
 - (ii) Whether it is bound, numbered, and organized, as applicable.

* * * * *

§51.9 What is the proper language of incorporation?

- (a) The language incorporating a publication by reference shall be as precise and complete as possible and shall make it clear that the incorporation by reference is intended and completed by the final rule document in which it appears.
- (b) The language incorporating a publication by reference is precise and complete if it—
 - (1) Uses the words “incorporated by reference;”
 - (2) States the title, date, edition, author, publisher, and identification number of the publication;
 - (3) Informs the user that the incorporated publication is a requirement;
 - (4) Makes an official showing that the publication is in fact available by stating where and how copies may be examined and readily obtained with maximum convenience to the user; and
 - (5) Refers to 5 U.S.C. 552(a).
- (c) If the Director approves a publication for incorporation by reference, the agency must—

(1) Include the following under the DATES caption of the preamble to the final rule document (See 1 CFR 18.12 *Preamble requirements*):

The incorporation by reference of certain publications listed in the regulations is ap-

proved by the Director of the Federal Register as of _____.

(2) Includes the term “incorporation by reference” in the list of index terms (See 1 CFR 18.20 *Identification of subjects in agency regulations*).

EFFECTIVE DATE NOTE: At 79 FR 66278, Nov. 7, 2014, §51.9 was amended by revising paragraphs (a) and (c), effective Jan. 6, 2015. For the convenience of the user, the revised text is set forth as follows:

§51.9 What is the proper language of incorporation?

(a) The language incorporating a publication by reference must be precise, complete, and clearly state that the incorporation by reference is intended and completed by the final rule document in which it appears.

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(c) If the Director approves a publication for incorporation by reference in a final rule, the agency must include—

(1) The following language under the DATES caption of the preamble to the final rule document (See 1 CFR 18.12 *Preamble requirements*):

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of _____.

(2) The preamble requirements set out in 51.5(b).

(3) The term “incorporation by reference” in the list of index terms (See 1 CFR 18.20 *Identification of subjects in agency regulations*).

§51.11 How does an agency change or remove an approved incorporation?

(a) An agency that seeks approval for a change to a publication that is approved for incorporation by reference must—

(1) Publish notice of the change in the FEDERAL REGISTER and amend the Code of Federal Regulations;

(2) Ensure that a copy of the amendment or revision is on file at the Office of the Federal Register; and

(3) Notify the Director of the Federal Register in writing that the change is being made.

(b) If a regulation containing an incorporation by reference fails to become effective or is removed from the Code of Federal Regulations, the agency must notify the Director of the Federal Register in writing of that fact

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within 5 working days of the occurrence.

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